IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 801 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ASHOKBHAI DHANJIBHAI VASAVA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
THROUGH JAIL for Appellant(s) : 1,
MS SADHANA SAGAR for Appellant(s) : 1,
Mr.R.C.Kodekar, A.P.P. for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 22/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

1. This Criminal Appeal is directed against the judgement rendered in Sessions Case no.43 of 2005 by the learned Additional Sessions Judge , Fast Track Court no.6, Vadodara, convicting and sentencing the appellant-Ashok Dhanjibhai Vasava (original accused) to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo further S.I. for one year of the offence under Section 302, Indian Penal Code.

2. In a nutshell, the prosecution case as unfolded during trial, is as under:

The incident in question took place on 10th December, 2004 at about 5.30 a.m. on the road outside the house of the complainant Lataben Pandurang Pawar situated Warasiya, Shitlamata's Moholla, R.T.O. Road, Vadodara. According to the prosecution, the complainant-Lataben was residing in the said house along with her husband, three children,(one son and two daughters) and her father. On the day of the incident, when her husband had left for his job, one Ashok Vasava, with whom she had some affairs before her marriage, came to her house and asked her to accompany him. Upon her refusal, he threatened to

set her on fire and dragged and took her out of the house.. Thereafter, after five to ten minutes of quarrel, the appellant-accused took the can of kerosene which was lying in the house of the complainant(deceased Lataben) and sprinkled the kerosene over her body. Thereupon, the complainant, started screaming . At that time, her children as also her father had woke up. Pursuant to this, it is alleged, that the appellant-accused set her (complainant) on fire by means of a match stick and fled away. The complainant undoubtedly screamed out in pain which resulted in the congregation of several persons there. The flames were ultimately put off. In the meantime, the husband of the complainant on receiving the news from his daughter of his wife having received burn injuries, returned home from hotel Sangraj where he was working and finding that his wife Lataben was badly burnt took her to S.S.G. Hospital, Vadodara, where she was given preliminary treatment. The Doctor found her condition to be serious. The police were informed. The Doctor recorded the complaint/history as per the statement made by the complainant which has been subsequently converted to the status of a dying declaration. In

the meanwhile, the police had also arrived and recorded the statement of the complainant which has again been converted to the status of a dying declaration. Upon a Yadi having been sent, the Executive Magistrate had also arrived and recorded the statement of the complainant which has again been treated as a dying declaration. The complainant-Lataben's condition deteriorated and even though she survived for 7 days, she ultimately died on 17-12-2004 at the hospital while on treatment. The appellant-accused had been arrested in the meanwhile and came to be charged for having committed an offence punishable under Section 302, IPC. An offence was registered vide CR no.1/316 of 2004 and the charge-sheet was filed before the learned J.M.F.C.,Vadodara. As the offence in question was exclusively triable by the Court of Sessions, the case was then committed to the Court of Sessions. The learned Sessions Judge framed charge Exh.13. The appellant-accused pleaded not guilty to the charge and claimed to be tried. To prove its case against the accused, the prosecution has examined as many as 19 witnesses and also produced documentary evidence like Panchnama of the scene of offence Exh.33, F.S.L.

report Exh.45, Inquest Panchnama Exh.34, Postmortem note Exh.52 etc. After recording the evidence of prosecution witnesses was over, the learned Judge recorded the statement of the appellant-accused under Section 313 of the Criminal Procedure Code. In his statement, the appellant-accused denied the case of the prosecution and stated that a false case has been filed against him, however he did not examine any witness in support of his defence. The learned trial Judge after evaluating the evidence held the accused guilty and convicted him of the offence of murder and passed the judgment and order of conviction and sentence as stated here-in-above.

3. Learned Counsel Ms. Sadhana Sagar for the appellant(original accused) has submitted that there are discrepancies in the evidence of witneses regarding consciousness of the deceased Lataben and the time and place of occurrence. She submitted that since the evidence of these witnesses suffer from various infirmities, the appellant-accused could not have been convicted on the basis of such evidence. According to the learned Counsel the deceased Lataben having received extensive burns all over her body, she could not have

been in a position to speak and the consciousness of the deceased at the time of making the dying declarations before the Doctor, the P.I. and the Executive Magistrate is highly doubtful. According to the learned Counsel the whole story of the prosecution is concocted and the appellant accused is falsely implicated in the crime in question. According to the learned Counsel , the judgment and order of conviction and sentence passed against the appellant-accused cannot be sustained , and therefore, the appeal deserves to be allowed and the appellant-accused be acquitted of the offence with which he was charged.

4. Learned A.P.P. Mr. Kodekar on the other hand submitted that the evidence of the three children and husband of the deceased, even though they are related witnesses is natural, trustworthy and corroborated in material particulars by the deposition of the Doctor, the P.I., as also the complaint and other evidence on record, and therefore, judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Vadodara, could not be said to be perverse, illegal or improper. According to the learned A.P.P. the learned Additional Sessions Judge has considered the entire evidence on

record in its right perspective, hence, there is no reason to interfere with the findings recorded by the learned Additional Sessions Judge and the appeal deserves to be dismissed.

5. Undoubtedly, the present case, entirely rests on the three dying declarations made by the complainant-deceased Lataben. The first dying declaration(complaint) was recorded at S.S.G. Hospital on 10-12-2004 at around 7.00 p.m. by the Medical Officer Mr. Maheshkumar Kanurang Brahmbhatt Exh.48 who was on duty at that time. According to the Doctor as soon as the deceased Lataben was brought to the hospital by her husband Pandurang Narayan Pawar, she was taken to the examination room and in presence of the ladies staff, history in respect of the burn injuries sustained by her was taken down in the words spoken by the deceased, viz., that on 10-12-2004 at around 6.00 a.m. a known person named Ashok Vasava had burnt her in front of her house situated at Warasiya Shitlamata's Moholla, by sprinkling kerosene and using a match stick. The Doctor has categorically stated in his cross examination that preliminary treatment was given, and thereafter, she was referred to Senior Surgeon, that her condition was serious, there was 79 to 89%

second and third degree burns with typical kerosene smell , that the patient(deceased) was fully conscious and the history was written down in the words spoken by the patient herself. This fact is also borne out from the injury certificate Exh.49 issued by the Doctor. The Post mortem report Exh.52 shows that the cause of death is due to septicaemia following burns.

6. Exh.64 is the complaint (dying declaration) recorded before the Police Inspector, Vadodara Police Station Shri Ghanshyam Nirubha Jhala wherein it is categorically stated by the deceased Lataben that on 10-12-2004 between 5.30 to 6.00 a.m after her husband had left for his duty ,the appellant-accused Ashok Vasava with whom she had love affairs before her marriage had come to her house situated at Warasiya, Shitlamata's Moholla , R.T.O. Road, Vadodara, and asked her to accompany her to which she refused. The accused then dragged the deceased Lataben and took her out of the house and threatened to burn her alive. After five to ten minutes of quarrel, the appellant-accused took the can of kerosene which was lying in the house of the deceased and sprinkled the kerosene over her body. Thereupon, the deceased Lataben raised shouts but soon

the accused appellant set her ablaze by means of a match stick. The deceased Lataben has in clear terms stated in this complaint that her three children were present in the house at that time and that all of them were awake and ran out of the house on hearing her shrieks and witnessed the incident of burning her alive by Ashok Vasava. P.I. Jhala in his deposition at Exh.63 has categorically stated that the complaint (dying declaration) as aforesaid has been recorded before him in the words of the deceased and that the same bears his signature.

7. Exh.29 is the dying declaration of the deceased Lataben recorded before the Executive Magistrate at S.S.G. Hospitl Vadodara on 10-12-2004 at 9.45 a.m. wherein the deceased Lataben has stated that before her marriage she had love affairs with Ashok Vasava, and thereafter, she had no relationship with him after her marriage. Ashok Vasava had also got married. Still, however, Ashok Vasava very often insisted her to accompany him. That on 10-12-2004 also said Ashok Vasava had come to her residence at Shitlamatani Moholla and asked her to accompany him. She stated that, at that time her husband had already left for duty. He then took the can of kerosene which

was lying in her house, sprinkled the same over her body and set her ablaze on the road. The deceased Lataben has also stated that at that time her three children were also present in the house. It is borne out from this dying declaration that it has been recorded after ascertaining from the Doctor on duty and the staff present that the patient(deceased) was conscious and in a fit state of mind to make the statement. This declaration bears the signature of the Executive Magistrate as also the left hand thumb impression of the patient. The letter written by the P.I. City Police Station, Vadodara (Exh.30) bears the endorsement of the Doctor which also indicates that the patient was conscious at the time of making the recitals in the DD Exh.29.

8. This Court has to consider whether the dying declarations on record are truthful, reliable and can be acted upon as in the instant case, the most important aspect is with regard to the evidentiary value of the dying declarations. As can be seen from the contents of the dying declarations at Exhs. 48, 64 and 29 narrated above, the same has been recorded by the Doctor, P.I. and the Executive Magistrate respectively and there is certification from the Doctor that the patient was conscious, was

able to speak and in a fit condition to make the statement at the time of making the declarations. Moreover, the deceased who was in death bed and when every hope of this world is lost and the mind is induced by the most powerful considerations to speak the truth, had implicated the appellant accused as the person who set her on fire in all the three dying declarations. All throughout her version with regard to the occurrence of incident is consistent as she had stated that on 10-12-2004 around 5.30 to 6.00 a.m. when her husband had left for duty a known person Ashok Vasava with whom she had love affairs prior to her marriage had come to her residence and asked her to accompany him. Upon her refusal he dragged her out of the house and after five to ten minutes went inside her house, took the can of kerosene, sprinkled the kerosene over her body and set her ablaze. The categorical statement made by her to the effect that before her marriage, she had affairs with the appellant-accused, but not after her marriage speaks volumes about the clarity of her mind at the time of making the statement and that she was speaking the truth. There is also nothing on record to show that the deceased Lataben was tutored/or induced to make a false

dying declaration. Even the Doctor, the Executive Magistrate or the P.I. is not a person who can be said to be interested in the outcome of the case. After having given our most anxious thought and careful consideration,we find that the dying declarations have not only been recorded in the manner as required under law but recitals made by the deceased Lataben are nothing but the truth and conviction can safely be based on the same alone.

9. We now proceed to examine the evidence of material witnesses. Vaishali Pandurang Pawar- the daughter of the deceased in her deposition Exh.18 has stated that she knows Ashok Vasava. She had identified Ashok Vasava in Court. She stated that she herself, her brother and her younger sister were present in the house and witnessed the incident. She has stated that on the day of incident at 5.a.m. when her father had already left for his job, Ashok Vasava had come to their house and asked her mother to accompany him, but her mother had refused. Thereupon, Ashok Vasava caught hold of her mother, dragged her out of the house towards the road, returned back to their house, took the can of kerosene which was lying in the house

and sprinkled the kerosene over her mother's body as a result of which her mother raised shouts. On hearing our mother's screams we all ran towards the road. Soon Ashok Vasava lit a match stick and set our mother ablaze. On hearing our shouts, Kailashben, Kantaben and Rekhaben from the surrounding house came running and extinguished the fire. In the meantime, their father had returned from office on receiving the news from the younger sister who went to Sangraj Hotel for that purpose. Their mother was then taken to the hospital where she died during treatment on 17-12-2004. In her cross examination she has specifically stated that Ashok Vasava was present at the spot where my mother was burnt, the act of burning her mother was done by Ashok Vasava by means of a match stick, but he fled away soon after the incident, that she was afraid, that she was attending morning school and gets up at 5.00 a.m., that their house consisted of only one room etc. The other witnesses, namely Jeetendra Pandurang Pawar Exh.19 the son of the deceased Lataben and Puja Pandurang Pawar Exh.20, the daughter of the deceased Lataben have also given almost similar statements as that of Vaishali Pandurang Pawar Exh.19 and

there are no material discrepancies as regards the presence of the appellant-accused , the act of the accused in burning the deceased Lataben, as also their presence in the house at the time and place of incident, the place of incident and their having witnessed the incident.

10. Exh.24 is the deposition of Pandurang Narayan Pawar, the husband of the deceased. In his cross-examination, he has stated that on the day of incident at 5.30 a.m. when he was on duty at Sangraj Hotel, his daughter Puja had come there and informed him that her mother had been burnt. When he arrived at the spot, he found his wife Lata in an unconscious condition. He took her to the hospital, the police had come there and his sister in law had told everything to the police. He has cateorically stated that deceased Lata had regained consciousness at that time and told him that Ashok Vasava had burnt her. The version of this witness in cross examination on material aspects is the same as narrated by his three children at Exhs.18, 19 and 20, and therefore, we do not propose to repeat the same here.

11. No doubt these witnesses are related and interested witnesses they being the children of the deceased Lataben, but

so far as the relationship of eye witnesses and their familiarity with the deceased, it does not render per se their evidence suspicious. All that is required to be done in such cases is to carefully analyse their evidence and if after deeper scrutiny it is found acceptable to act on it. It is important to note here that even if a major portion of the evidence is found to be deficient, in case the residue is sufficient to prove the guilt of the accused, conviction can be maintained. In the instant case, we find only normal discrepancy with regard to the time of the incident but it is clear that incident took place between 5.30 to 6.00 am on 10-12-2004 on the R.T.O. road near the house of deceased Lataben. In so far as the consciousness of the deceased at the time of making the declarations is concerned there is ample evidence to show that the deceased was conscious and in a fit state of mind to give the declarations. Therefore, the normal discrepancies in this case do not corrode the credibility of the case. It is true that the witnesses in this case are related witnesses, and therefore, partisan and interested witnesses but it would be unreasonable to discard their evidence on that sole ground as it would lead to failure of justice.

12. Thus, on a careful consideration of the entire evidence, we find that the trial Court was justified in convicting the accused as the case of the prosecution is supported by the three dying declarations and corroborated by other evidence. Since the correctness of the dying declaration is not discredited and the other evidence supports the case of the prosecution, in our considered opinion, the prosecution evidence conclusively and unerringly leads to the only irresistible conclusion that the appellant-accused has committed the murder of the deceased.

13. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA Vs. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:

"....This Court has observed in Girija Nandini Devi v. Bigendra Nandini Chaudhary (1967) 1 SCR 93: AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court, expression of general agreement with the reasons

given by the Court the decision of which is under appeal will ordinarily suffice."

14. The net result of the above discussion is that the prosecution has proved beyond reasonable doubt that the appellant-accused committed the murder of the deceased and there is no merit in the appeal. The appeal is therefore liable to be dismissed.

15. For the foregoing reasons, the appeal fails and is hereby dismissed. Muddamal articles to be disposed of in terms of the directions given in the impugned judgment.

(R.P.Dholakia,J.)

(M.D.Shah,J.)

lee.